



Decision

Matter of: Southern Technologies Inc.

File: B-256190

Date: May 23, 1994

Gary J. LaPinsky for the protester.
Lester Edelman, Esq., Department of the Army, Office of the Chief of Engineers, for the agency.
Adam Vodraska, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency determination allowing a bidder to correct a mistake--failure to include the cost of equipment--in its low bid prior to award was proper where the agency reasonably determined that clear and convincing evidence established both the existence of mistake and intended bid price, and the corrected bid remains low as corrected.

2. An unsigned standard form 1442 does not render a bid nonresponsive where the bid is accompanied by an executed certificate of procurement integrity and a signed bid bond that refers to and clearly identifies the bid.

DECISION

Southern Technologies Inc. protests the award of a contract to the George Wagner Electric Company under invitation for bids (IFB) No. DACW59-93-B-0053, issued by the United States Army Corps of Engineers for the upgrading of remote control systems for dam gates along the Monongahela River.

We deny the protest.

The IFB requested bids for removing components of the existing dam gate remote control system, and furnishing and installing a new "completely integrated" remote control system at each site, which will make it possible to operate and control the dam gates from a control panel in a building at each site. The IFB required bidders to submit prices for three bid items: (1) a not-to-exceed dollar amount for reimbursement for actual performance and payment bond premiums; (2) upgrading remote control system for dam gates, Maxwell Locks and Dam; and (3) upgrading remote control

system for dam gates, Lock and Dam 4. The bid price was the total of these three items.

Nine bids were received by the 11 a.m., September 10, 1993, bid opening time. Wagner was the apparent low bidder at \$68,768, which consisted of \$1,345 for the reimbursement of bond premiums and \$33,710 for each of the remote control system upgrade items. Wagner's bid was significantly lower than Southern's next low bid of \$128,900, as well as the other bids received and the government estimate (\$139,250).

Shortly after bid opening (at approximately 1 p.m.), Wagner notified the contracting office that it had made a mistake in its bid, in that it failed to include the price of equipment that it had been quoted from a supplier. Wagner claimed that its intended bid, had it included the omitted equipment, would be \$59,657.95 (instead of \$33,710) for each of the two remote control upgrades, with a correspondingly increased bond premium of \$2,386, for a total bid of \$121,701.90.

By letter dated September 13, the contracting officer requested Wagner to supply documentation to support its mistake claim. Wagner provided the requested documentation including a file copy of the bid, original workpapers, a notarized statement as to the nature of the mistake, and the suppliers' quotations. The contracting officer determined from these documents that Wagner had presented clear and convincing evidence of a mistake and of the intended bid price. The Division Commander affirmed the contracting officer's determination, and on December 23 the Corps accepted Wagner's revised bid of \$121,701.90.

Southern protests this determination. Although Southern does not dispute that Wagner made a mistake in its bid, it argues that Wagner has not presented the required clear and convincing evidence of its intended bid so as to allow correction.

As provided in Federal Acquisition Regulation (FAR) § 14.406-3(a), an agency may permit correction of a bid where clear and convincing evidence establishes both the existence of a mistake and the bid actually intended. American Restoration, Inc., B-250796, Jan. 11, 1993, 93-1 CPD ¶ 32. In considering the upward correction of a low bid, work sheets may constitute clear and convincing evidence if they are in good order and indicate the intended bid price and there is no contravening evidence. McInnis Bros. Constr., Inc., B-251133, Mar. 1, 1993, 93-1 CPD ¶ 186. Whether the evidence meets the clear and convincing standard is a question of fact, and we will not question an agency's decision based on this evidence unless it lacks a reasonable

basis. M. A. Mortenson Co., B-254152, Nov. 19, 1993, 93-2 CPD ¶ 296.

We find that the agency reasonably determined that Wagner's supporting documentation meets this standard. Specifically, a September 10, 1993, facsimile transmission from a supplier, Allen-Bradley, which was received by Wagner at 8:25 a.m. (before bid opening), quoted a system integration price of \$54,350. This quote formed the basis for Wagner's original bid as shown on its workpapers.¹ Although the Allen-Bradley quote stated a separate price for system integration and equipment, Wagner states in its notarized statement that when it received the quote it believed "that items supplied by a manufacturer were included in a system integration quote," that is, that the integration price included the equipment. Wagner thus had no reason to include in its bid the separate equipment price. Wagner states that it was only after bid opening--presumably after seeing the significantly higher other bids--that it realized the equipment was not included in the system integration price. Given that Wagner's bid price was significantly lower than the other bids and the estimate, and the fact that the original workpapers show that no amount was included in the bid for equipment, we think the agency reasonably concluded that Wagner's documentation clearly evidenced a mistake.

Wagner's intended bid price also is sufficiently clear in light of the inclusion of the equipment price in the Allen-Bradley quote. The paragraph below that quoting the systems integration price of \$54,350 listed equipment costs totaling \$43,610.² Although Wagner disregarded this price, as discussed above, since the equipment was part of the overall work Allen-Bradley was going to perform, it was reasonable for the agency to conclude that this was the equipment price Wagner would have used.

¹Wagner's workpapers show that it calculated the price for its original bid as follows:

\$	955.00	for material
\$	1,706.88	for labor
\$	54,350.00	cost of the control package
\$	2,570.00	applicable sales tax on equipment
\$	426.72	for overhead
\$	7,411.54	profit (13 percent)
\$	1,348.40	bond premium
\$	68,768.00	total bid

²The quote stated a price for base equipment of \$32,500 plus \$5,555 for each of the two sets of required spare parts.

Other adjustments to Wagner's bid necessitated by the addition of the equipment cost can easily be calculated. Under Wagner's bid preparation method, as supported by its workpapers, applicable additional sales tax, profit, and bond premium amounts as calculated as percentages of such costs as that for equipment and added into the bid to determine Wagner's intended bid price. These additional amounts are readily calculable based on the methodology used by Wagner in determining its initial bid. For example, Wagner's worksheets for its initial bid evidence that a profit of 13 percent was factored in based on the cost of material, labor, and the supplier quote. Since labor, other material, and overhead costs remained constant, a profit of 13 percent was added to the corrected bid based only on the addition of the previously omitted equipment to the supplier quote. Likewise, the bid item for bond premium reimbursement was originally calculated at 2 percent of the bid price. The \$1,038 increase in that item in the corrected bid corresponds to the overall increase in the other bid items associated with the addition of the equipment costs.

Based on the foregoing, we think that the agency reasonably determined that Wagner's evidence of its mistake and intended bid price was clear and convincing.³ Since Wagner's bid as corrected still remained low and Wagner did not displace any other bidders, the upward correction of Wagner's bid was appropriate. See R.L. Lee Constr., B-255214, Feb. 7, 1994, 94-1 CPD ¶ 83; Pacific Components, Inc., B-252585, June 21, 1993, 93-1 CPD ¶ 478.

Southern also protests Wagner's failure to sign standard form (SF) 1442, "Solicitation, Offer, and Award." In general, a bid which is not signed must be rejected as nonresponsive because, without an appropriate signature, the bidder would not be bound upon the government's acceptance of the bid. Stafford Grading and Paving Co., Inc., B-245907, Jan. 14, 1992, 92-1 CPD ¶ 66. However, there are certain situations where the bidder's failure to sign its bid may be waived as a minor informality; for example, such a waiver is proper where the bid was accompanied by other material--such as a signed bid guarantee that refers to and clearly identifies the bid--indicating the bidder's intention to be bound. FAR § 14.405(c)(1); Micon Corp., B-249231, Oct. 28, 1992, 92-2 CPD ¶ 293.

³While the protester speculates that other elements of cost may have been omitted from Wagner's bid, there is no evidence in the Wagner workpapers to support this speculation.

Although the SF 1442 included with Wagner's bid was unsigned, it is clear from other documents in the bid that Wagner intended to be bound by its offer. Specifically, the bid bond accompanying the bid was properly signed and specifically referenced the solicitation here (IFB DACW59-93-B-0053). Wagner also showed its intent to be bound by signing the certificate of procurement integrity as well as the amendments to the solicitation. As detailed above, this provided the agency a sufficient basis for waiving Wagner's failure to sign the SF 1442.

The protest is denied.

/s/ John M. Melody
for Robert P. Murphy
Acting General Counsel